

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GLORIA L. JOHNSON

Claimant

VS.

HALLMARK CARDS, INC.

Respondent

Self Insured

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) Docket Nos. 258,253 & 258,254
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ORDER

Respondent appeals from a preliminary hearing Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery on October 9, 2000.

ISSUES

On August 10, 2000, claimant filed a Form K-WC E-1 Application for Hearing alleging a series of accidents "ending September 1998" caused injury from repetitive trauma to her "left and right shoulders, back and body as a whole." This claim was assigned Docket No. 258,253.

Also on August 10, 2000, claimant filed a second Form K-WC E-1, which alleged a specific accident "on or about 7/28/00." On that date "claimant, while in [the] course and scope of employment, was lifting stock when [the] injury occurred." Claimant's injury was to her "back and body as a whole." This claim was assigned Docket No. 258,254.

On August 17, 2000 claimant filed a Form K-WC E-3 Application for Preliminary Hearing in Docket No. 258,254 for the accident of "7-28-00". No Application for Preliminary Hearing was filed in Docket No. 258,253.

The preliminary hearing was held by Judge Avery on September 29, 2000. At that time claimant's counsel announced that the application for hearing misstates the date of accident and the correct date alleged is July 26, 2000. Following that hearing, Judge Avery granted claimant's request for medical treatment benefits. Upon review, respondent admits claimant met with injury to her back on that date "in the course of" her employment, but denies the injury was the result of an accident that arose "out of" the employment.

Respondent's Application for Appeals Board [Review] and Docketing Statement bears Docket Nos. 258,253 and 258,254 as does Respondent's Brief to the Appeals Board. But the transcript of the September 29, 2000 preliminary hearing bears only Docket

No. 258,254. Likewise, Judge Avery's October 9, 2000 Order for Medical Treatment bears only Docket No. 258,254. Therefore, the Board will treat this as an appeal in Docket No. 258,254 only.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the order should be affirmed.

On the date of accident, claimant was on light duty inspecting greeting cards as a result of her previous shoulder injuries in Docket No. 258,253. The claimant alleges injury to her back from performing those job duties of lifting, carrying and sorting cards. The ALJ found claimant did suffer an accident and that her accidental injury arose out of and in the course of the employment. The Board agrees.

To arise out of the claimant's employment, the injury must have some causal connection to employment. This is not a strict requirement that the claimant be injured while actually doing the work. It is enough if the risk leading to the injury is incidental to the work duties. Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); Brobst v. Brighton Place North, 24 Kan. App. 2d 766, 955 P.2d 1315 (1997); Bailey v. Mosby Hotel Co., 160 Kan. 258, 160 P.2d 701 (1945). But not every act during the course of employment gives rise to a risk associated with or incidental to employment. Squires v. Emporia State University, 23 Kan. App. 1d 325, 929 P.2d 814 (1997). In this case, the claimant's job in the quality reject area required that she obtain a pile of greeting card stock from the incoming area by moving a skid to her work area with a skid jack. She would then repetitively take stock off the skid in 10 to 20 pound increments and carry it to a table where she would sit and inspect the stock for defects. The cards were then returned to skids and bundled. These actions were for respondent's benefit and the risk associated was incidental to the employment. The medical evidence supports claimant's contention that her work caused, aggravated or accelerated her current back condition. The Board therefore concludes, as did the ALJ, that claimant's back injury did arise out of claimant's employment. Furthermore, the fact that claimant's pain symptoms came on gradually during her shift as opposed to a single sudden event does not change the character of her injury from an accident to a personal risk.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery on October 7, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

c: Michael W. Downing, Kansas City, MO
Gregory D. Worth, Lenexa, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director